IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No.	:	10/057,323	Confirmation No. 1525
Applicant	:	HARRY R DAVIS	
Filed	:	1/25/2002	
Title	:	COMBINATIONS OF PEROXISOME PROLIFERATOR-ACTIVATED RECEPTOR-ACTIVATED RECEPTOR (PPAR) ACTIVATOR(S) AND STEROL ABSORPTION INHIBITOR(S)	
Group Art Unit	:	1617	
Examiner	:	San-ming Hui	
Customer No.	:	28289	

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NON-COMPLIANT APPEAL BRIEF (37 CFR 41.37)

Sir:

In response to the Notification of Non-Compliant Appeal Brief dated January 6, 2009, Applicant hereby resubmits page 4 of the Appeal Brief dated December 2, 2008. Under the heading "GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL," Applicant has now indicated that the rejection of claims 32, 102-104, 106-108, 110-112 and 126 is being appealed to the Board.

I hereby certify that this correspondence is being electronically submitted to the United States Patent and Trademark Office on January 16, 2009.

01/16/2009
Date Signature

Lisa A. Miller
Typed Name of Person Signing Certificate

REMARKS

The Notification of Non-Compliant Appeal Brief indicates that the Brief does not contain a concise statement of each ground of rejection presented for review, as required under 37 CFR 41.37(c)(1)(vi). The Notification indicates that the Brief should include the claims, statutes, and references according to the rejections stated in the Examiner's Final Rejection. A new Appeal Brief is not required.

Accordingly, the Appeal Brief has been corrected to include, in the section entitled GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL, a recitation of the claims, statutes and references according to the rejection stated in the Examiner's Final Rejection of September 26, 2008. This correction is made by the resubmission of page 4 of the Brief.

Applicants believe that the above described corrections have now put the Appeal Brief in full compliance with 37 CFR 41.37(c) and respectfully request the Appeal Brief be considered.

Respectfully submitted,

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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

I. Has a Prima Facie Case of Obviousness of Claims 32, 102-104, 106-108, 110-112 and 126 Under 35 U.S.C. § 103(a) Over US 5,846,966 ("Rosenblum et al."), The Medical Letter on Drugs and Therapeutics (1998) 40:1030: 68-69 ("Medical Letter") and EP 0 457 514 ("Bergey et al.") Been Established?

VII

ARGUMENT

I. The Required Prima Facie Case of Claims 32, 102-104, 106-108, 110-112 and 126 Obviousness Under 35 U.S.C. § 103(a) Over US 5,846,966 ("Rosenblum et al."), The Medical Letter on Drugs and Therapeutics (1998) 40:1030: 68-69 ("Medical Letter") and EP 0 457 514 ("Bergey et al.") has Failed to be Established.

A. The Rejection

Claims 32, 102-104, 106-108, 110-112 and 126 have been rejected under 35 U.S.C. §103(a) as obvious over US 5,846,966 ("Rosenblum et al."), The Medical Letter on Drugs and Therapeutics (1998) 40:1030: 68-69 ("Medical Letter") and EP 0 457 514 ("Bergey et al.").

The reasons for rejection are set forth in the Final Office Action, summarized as follows:

Rosenblum et al. allegedly teaches that the elected compound of Formula II, ezetimibe, is useful for reducing cholesterol and the risk of atherosclerosis (Final Office Action at page 3). Medical Letter allegedly teaches fenofibrate as useful in reducing serum cholesterol (Final Office Action at page 3). Bergey et al. allegedly teaches that captopril is useful in significantly reducing serum cholesterol in hypercholesterolemic patients and is beneficial as an anti-atherosclerosis agent to slow or regress the progress of atherosclerosis. (Final Office Action at page 3). Bergey et al. also allegedly teaches the combination of captopril with an additional cholesterol lowering agent such as HMG-CoA reductase inhibitors. (Final Office Action at page 3).